

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3

4 FRANCISCO P. CASTILLO, JR., No. C 10-04149 CW (PR)

5 Petitioner, ORDER TO SHOW CAUSE

6 v.

7 R. GROUNDS, Warden,

8 Respondent.

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10 Petitioner, a state prisoner, has filed this petition for a
11 writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid
12 the \$5.00 filing fee. It does not appear from the face of the
13 petition that it is without merit. Good cause appearing, the Court
14 hereby issues the following orders:

15 1. The Clerk of the Court shall serve a copy of this Order
16 and the petition and all attachments thereto (docket no. 1) as well
17 as the exhibits (docket no. 3) upon Respondent and Respondent's
18 attorney, the Attorney General of the State of California. The
19 Clerk shall also serve a copy of this Order on Petitioner at his
20 current address.

21 2. Respondent shall file with this Court and serve upon
22 Petitioner, within one-hundred twenty (120) days of the issuance of
23 this Order, an Answer conforming in all respects to Rule 5 of the
24 Rules Governing Section 2254 Cases, showing cause why a writ of
25 habeas corpus should not be issued. Respondent shall file with the
26 Answer a copy of all portions of the relevant state records that
27 have been transcribed previously and that are relevant to a
28 determination of the issues presented by the petition.

1 3. If Petitioner wishes to respond to the Answer, he shall
2 do so by filing a Traverse with the Court and serving it on
3 Respondent within sixty (60) days of his receipt of the Answer.
4 Should Petitioner fail to do so, the petition will be deemed
5 submitted and ready for decision sixty (60) days after the date
6 Petitioner is served with Respondent's Answer.

7 4. Respondent may file with this Court and serve upon
8 Petitioner, within sixty (60) days of the issuance of this Order, a
9 motion to dismiss on procedural grounds in lieu of an Answer, as
10 set forth in the Advisory Committee Notes to Rule 4 of the Rules
11 Governing Section 2254 Cases. If Respondent files such a motion,
12 Petitioner shall file with the Court and serve on Respondent an
13 opposition or statement of non-opposition to the motion within
14 sixty (60) days of receipt of the motion, and Respondent shall file
15 with the Court and serve on Petitioner a reply within fifteen (15)
16 days of receipt of any opposition.

17 5. It is Petitioner's responsibility to prosecute this case.
18 Petitioner must keep the Court and Respondent informed of any
19 change of address and must comply with the Court's orders in a
20 timely fashion. Petitioner must also serve on Respondent's counsel
21 all communications with the Court by mailing a true copy of the
22 document to Respondent's counsel.

23 6. Extensions of time are not favored, though reasonable
24 extensions will be granted. Any motion for an extension of time
25 must be filed no later than ten (10) days prior to the deadline
26 sought to be extended.

1 7. Petitioner's motion for an evidentiary hearing is DENIED
2 without prejudice. There is no indication that an evidentiary
3 hearing is required under 28 U.S.C. § 2254(e). Petitioner's claims
4 do not rely upon extra-record evidence and a factual basis exists
5 in the record to determine the claims. If during its review of the
6 merits of the petition the Court determines that further fact
7 finding is required, the Court will decide whether to hold an
8 evidentiary hearing or whether the facts can be gathered by way of
9 mechanisms short of an evidentiary hearing, such as supplementation
10 of the record with sworn declarations from the pertinent witnesses.

11 See Downs v. Hoyt, 232 F.3d 1031, 1041 (9th Cir. 2000).

12 IT IS SO ORDERED.

13 Dated: 10/20/2010



14 CLAUDIA WILKEN
15 UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

FRANCISCO P CASTILLO JR,
Plaintiff,
v.
R GROUNDS et al,
Defendant

Case Number: CV10-04149 CW

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on October 20, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
receptacle located in the Clerk's office.

Francisco P. Castillo C-85768
Correctional Training Facility - Central
P.O. Box 689
Soledad, CA 93960

Dated: October 20, 2010

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk